

OFFICIAL GAZETTE



GOVERNMENT OF GOA

Note: There are three Extraordinary issues to the Official Gazette, Series II No. 50 dated 11-3-99 as follows:

- 1) Extraordinary dated 12-3-1999 from pages 761 to 762 regarding Notifications from Department of Revenue.
- 2) Extraordinary No. 2 dated 12-3-1999 from pages 763 to 764 regarding Notifications from Department of Transport and Department of Women and Child Development.
- 3) Extraordinary No. 3 dated 17-3-1999 from pages 765 to 766 regarding Notification from Department of Revenue.

GOVERNMENT OF GOA

Department of Co-operation

Office of the Registrar of Coop. Societies

Addendum

No. 1-3-71/EST/RCS

Read:- Government order No. 1-3-71/EST dated 11-3-1997 promoting Shri R. A. Phadte, Special Auditor, Coop. Societies to the post of Asstt. Registrar of Coop. Societies, on officiating basis.

In the Government order dated 11-3-1997 referred to above, the following paragraph shall be added after 2nd paragraph.

"Shri R. A. Phadte, may exercise his option if so desires within one month from the date of receipt of this addendum for fixation of his pay under F. R. 22(I)(a)(1)."

This is issued with approval of the Department of Personnel and the Finance (Revenue and Control) Department vide their U. O. No. 8025-F dated 25-9-98 and Fin. (Rev. & Cont.) No. 2751 dated 28-9-98, as per the advice of the Directorate of Accounts vide their letter Nos. DA/PA-III/II/98-99/1344 dated 16-9-98.

By order and in the name of the Governor of Goa.

S. D. Desai, Registrar of Coop. Societies and Ex-Officio Jt. Secretary.

Panaji, 20th November, 1998.

Department of Labour

Order

No. 28/70/90-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of

Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 10th October, 1992.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/3/91

Workmen

V/s

M/s Kerkar Industries

— Party I-Workmen

— Party II-Employer

Workmen represented by Shri Raju Mangueshkar.

Employer represented by Adv. M. S. Bandodkar.

Panaji, Dated: 18-5-92*

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa by its Order No. 28/70/90-LAB dated 4-1-1991 has referred the following issues for adjudication by this tribunal:

SCHEDULE

- (1) Whether the closure of its Industrial Establishment by the management of M/s Kerkar Industries, Vasco-da-Garnia. with effect from 3-7-90 is a factual closure?
- (2) Whether the action of the management of M/s Kerkar Industries, Vasco in terminating the services of their 10 workmen with effect from 3-7-90 is legal and justified?
- (3) If the answer to either (1) or (2) above or both is negative then to what relief the workmen are entitled?

2. On receipt of this reference, a case at No. IT/3/91 was registered and the notices were served upon the parties, in response to which they appeared and submitted their pleadings which can be found at Exbs. 4, 5 and 6. On considering their pleadings, I framed the

necessary issues at Exb. 7 and thereafter the case was posted for hearing. However on the adjourned date of hearing, it was submitted by Shri M. S. Bhandokar, the learned representative for the employer that there was every possibility of arriving at a settlement and eventually on 30th April, 1992, both the parties submitted a settlement which has been duly verified. It has been submitted by the learned representatives of both the sides that a consent award be passed in terms of this settlement. I have gone through the terms of this settlement and I have found that they are certainly in the interest of the employees-Party I, and hence I accept the suggestion made on behalf of both the sides and pass the following consent award.

ORDER**Terms of the Settlement**

1. It is agreed between the parties that the workmen shall be paid money benefit as per annexure 'A', mentioned against their names.
2. It is agreed by the workmen that amount mentioned against their names as per the annexure 'A', is full and final settlement of their claim arising out of their employment with the firm, which includes retrenchment compensation, notice pay, gratuity, bonus upto to date, new salary, if any, ex-gratia. and further irrevocably confirm that they have no claim of whatsoever nature against M/s Kerkar Industries, including any claim of reinstatement, or re-employment.

3. It is agreed that the amount mentioned in the annexure against the names of workmen shall be paid in two installments, first installment shall be paid on 28-5-92 and the second installment shall be paid by July end 1992.
4. Since four workmen namely Shri Hanumanta Dodamany Aminchal Wadi, Mariappa Chalwadi and Rajendra Neurekar have already settled directly with the firm the union does not press their demand contained in reference.
5. No order as to costs. Inform the Government accordingly.

Sd/-

M. A. DHAVALE
Presiding officer
Industrial Tribunal

Annexure - 'A'

Sr. No.	Names	Date of joining	Years of service	Rounded up.	Notice pay of 75	Petr. Comp.	Grat.	Leave pay	June Sal.	July Sal.	Adv.	Bonus for 88-89 + 89-90	Ex-Gratia	Total
1.	Shri Vishalakshan	2-10-77	17 years	17 years	875/-	7437/-	8382/-	102/-	782/-	78/-	—	875/- + 875/-	7437/-	27,043/-
2.	Shri Ramdas Chari	1-01-77	13.5 "	13 "	910/-	5915/-	6825/-	106/-	815/-	81.50/-	—	910/- + 910/-	5915/-	22,387/-
3.	Shri Sadanand Chari	1-01-78	12 "	12 "	960/-	5760/-	6510/-	380/-	849/-	85.00/-	—	960/- + 960/-	5760/-	22,224/-
4.	Shri Ramesh Karikar	1-10-82	7.8 "	8 "	925/-	3760/-	4270/-	Nil	827/-	82.00/-	—	925/- + 925/-	3700/-	15,355/-
5.	Shri Anand Rawal	1-05-83	7 "	7 "	630/-	2170/-	2503/-	Nil	554/-	55.00/-	1200/-	620/- + 620/-	2170/-	8,112/-
6.	Shri Gangaram Sawant	1-01-87	3.5 "	3 "	360/-	540/-	623/-	120/-	360/-	36.00/-	—	360/- + 360/-	540/-	3,299/-

Order

No. 28/5/91-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 21st September, 1992.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/12/91

Shri Vernon Lobo
V/s

... Workman/Party I

M/s The Himalaya Drug Company

... Employer/Party II

Workman represented by Adv. E. O. Mendes.

Employer represented by Adv. G. K. Sardessai.

Panaji, Dated: 26-8-1992.

AWARD

In exercise of the powers conferred by clause (d) of Sub. Section (1) of Section 10 of the I. D. Act, 1947, the Government of Goa by its order No. 28/5/91-LAB dated 27-2-91 has referred the following issue for adjudication by this Tribunal.

"Whether the action of the management of M/s. The Himalaya Drug Company, Bombay, in dismissing Shri Vernon Lobo, Sales Medical Representative, with effect from 20-7-1990, is legal and justified?

If not, to relief the workman is entitled?"

2. On receipt of this reference, a case at No. IT/12/91 was registered and notices were served upon both the parties in response to which, they appeared and submitted their pleadings.

3. The Claim Statement of Party I-Shri Vernon Lobo (hereinafter called as the "workman") can be found at Exb. 3 while Party II-M/s The Himalaya Drug Company (hereinafter called as the 'Employer-Company') has filed its Written Statement at Exb. 7. The workman has filed a Rejoinder at Exb. 8. However, at this stage, it is not necessary for me to state in extenso, the rival contentions of the parties to this dispute as disclosed in their pleadings, in as much as, I am mostly concerned at this stage to consider the jurisdiction of this Tribunal to decide the present reference. Now, the main contention taken by the Employer Company is in substance to the effect that this Tribunal has no jurisdiction in as much as the Government of

Goa was not an Appropriate Government to refer this dispute to this Tribunal. Hence, I am restricting only for finding out as to whether the employer's contention in this behalf is well sustained; and hence I think it necessary to state only a few facts emerging from their pleadings to decide the above referred question of jurisdiction.

4. Party I-Workman was appointed as a Medical Representative by Party II, with effect from 10-4-1978. He was posted at Margao from the very first day of his employment but he had a touring duty. Initially he had a touring programme for 45 days out of which he was to work for 30 days in Goa and the remaining 15 days in Sawantwadi District. However, thereafter he was asked to work all the 45 days in Goa. Thereafter the tour programme was reduced to 30 days cycle. Accordingly, the workman used to carry out his duty by going on tour. However, there were some bickering between the workman and the employer and it is the say of the workman that the Zonal Manager had a grudge against him. Thereafter he was sick and was on sick leave. After obtaining a fitness certificate, the workman was issued a chargesheet dated 14-3-90 to which he sent a reply on 22nd March, 1990. However, the explanation given by the workman did not satisfy the Employer-Company and hence an enquiry was initiated which was to take place in Bombay on 24-4-90. It is the workman's grievance that he was not even paid travelling and halting allowance which could have enabled him to participate in the enquiry which was to be held in Bombay. Hence, he could not attend the enquiry with the result that an ex-parte enquiry was held and ultimately the workman came to be dismissed by an order dated 20-7-1990. The workman has now challenged the Domestic inquiry held against him as also the final order of dismissal passed by the Employer-Company and hence the Government of Goa was pleased to refer this matter to this Tribunal for adjudication.

5. Party II-Employer-Company has filed a very elaborate written Statement at Exb. 7 which as I have stated earlier need not be reproduced at length. Instead, it is sufficient for me to state that besides contending that the enquiry held against the workman is fair and proper, on the basis of which the final order of dismissal was passed, the employer-company has taken a preliminary objection to the maintainability of this reference on two grounds.

It has been contended in para 1 (a) of Exb. 7 that Party I is not a workman as laid down in Industrial Dispute Act, and as such this Court has no jurisdiction. Secondly, it has been contended that this Tribunal is not a proper forum for adjudicating the dispute referred by the Government of Goa.

6. The oral evidence led by the Employer-Company was not required to be considered for determination of the question of jurisdiction, and hence I heard the submissions made by Shri Mendes for the workman and G. K. Sardesai for the Employer-Company. On considering their pleadings, the following two issues framed at Exb. 9 were treated as preliminary issues:

1. Does Party II prove that Party I is not a workman under the provisions of Industrial Dispute Act?

2. Does Party II prove that this Tribunal has no local jurisdiction to try this case for the reason stated in para 1 (b) of its written statement?

3. My findings on the above issues are as follows, for the reasons stated below:

1. Does not survive for consideration.

2. In the affirmative.

REASONS

8. Now, as I have stated earlier, the main contention taken up by the Employer-Company is in regard to the jurisdiction of this

Tribunal, and hence if it is held that this Tribunal has no jurisdiction to entertain and decide this reference; it will follow that issue No. 1 as to whether Party I is a workman or not, would not survive for consideration. I mean to say that if I hold that this Tribunal has no jurisdiction to decide this reference, it follows that the finding given on issue No. 1 will have no legal sanctity since, it would be finding of a Court having no jurisdiction. I, therefore proceed to consider the 2nd issue relating to the jurisdiction of this Tribunal. Now, it is a common ground that the Head Office of M/s The Himalaya Drug Company is situated in Bombay. The present workman was appointed as a Medical Representative of the Employer-Company w. e. f. 10-4-1978 and was posted at Margao. His duty was to tour in Goa and also in the nearby Sawantwadi District. Now, it has been contended by Shri Mendes that although the dismissal order was passed by the head office and dated 20th July, 1990 still it was sent by post to the workman who was then posted at Margao and hence the cause of action in the present dispute arose within the jurisdiction of this Tribunal and as such the Government of Goa was competent to refer this dispute to this Tribunal. I find that there is absolutely no substance in the above referred submission made by Shri Mendes for one patent fact which appears in the contract of service between the parties.

9. The appointment order of the present workman has been produced in this case which lays down several terms and conditions relating to the Contract of service between the parties. Para. 5 lays down, "Other conditions of service" and sub. clause (o) lays down thus:

"Any dispute or differences which may arise between you and the Company shall be subject to the jurisdiction of Bombay Courts only." (Underlining is mine for emphasis)

The order of appointment further reveals that at the foot of this order, the following endorsement under the signature of the workman appears:

"I confirm and agree to my appointment on the above terms and conditions which have been read and understood by me."

Sd/-

Vernon Lobo

Signature of Sales Promotion Employee

10. In view of the aforesaid condition, it has been urged by Shri Sardesai that both the parties are bound by the aforesaid condition and hence when a dispute arose between the parties the proper Court for redressing the dispute would have been the Tribunals in Bombay and not in Goa. In other words he has urged that the Government of Goa was not "Appropriate Authority" to refer this dispute to this Tribunal. I find there is substantial force in the above referred submission made by Shri Sardesai.

11. Now, it has not been disputed even by Shri Mendes for the workman that parties can confer jurisdiction on a particular Court by an explicit terms in contract of service. Besides the law on this point is now almost settled by series of decision of Supreme Court and also of other High Courts and I will only reproduce a few comments appearing on page 222 of Mulla's Code of Civil Procedure, Fourteenth Edition, 1st Vol. Under the caption, "Agreement as to the choice of Court", the learned commentator has observed as below:

12. When two courts or more have jurisdiction to try a suit or a proceeding, an agreement between the parties that the dispute between them shall be tried in one of such courts is valid and is not contrary to public policy (vide *Hakam Singh v. M/s Gammon (India) Ltd.* 1971 S. C. 740) Such an agreement does not contravene sec. 28 of the Contract Act. Thus, where the cause of action arises wholly or in part within the local limits of the jurisdiction of one court

and the defendant resides or carries on business in the local limits of the jurisdiction of another court, the parties can agree that the disputes between them shall be decided by one of such courts (Vide *Hakam Singh v. Gammon (India) Ltd.*, Supra). Accordingly, the words, "Subject to Rajkot jurisdiction only" in a contract between the parties have the effect of excluding the jurisdiction of courts other than those at Rajkot having jurisdiction otherwise to try the suit. (Vide *Kanpur Sugar Supply v. Harsukhlal*, AIR 1971 Allahabad, 502, *Jhun Jhunwala Bros. v. Subbaramier* AIR 1968 Madras 194, *M/s Beacon Pharmaceutical v. Khosla* AIR 1973 Punjab, 163). In such a case, the plaintiff by such agreement waives his right to file the suit in a particular court and therefore cannot object to an order by that other court returning the plaint for presentation to the Court agreed to by him and the defendant. (Vide *Rajendra Mills v. M/s H.V.M. Haji Hasan Dada* AIR 1970 Calcutta 342); such an agreement does not oust the jurisdiction of the Court having jurisdiction. Nevertheless, courts would ordinarily compel the parties to abide by such an agreement. (Vide *Bhagatram Gupta Cables* AIR 1977 Calcutta 451, & *Ghatge & Patil (Transport) Ltd. v. Madhusudan*, 79 Bom. LRI/378) However, it is not open to the parties to confer by their agreement jurisdiction on a Court which does not possess it under Civil Procedure Code.

13. Thus, as I have stated earlier the law of this point is now well settled and it leaves absolutely no doubt to conclude that once the parties have agreed to submit to the jurisdiction of a particular court, then the parties are bound by that term in the agreement, and no other court except one agreed upon, shall have jurisdiction to decide any suit or dispute between the parties.

14. Now, it is indeed needless to say that the question as to which is the "Appropriate Government", to refer the dispute to the Industrial Tribunal, has to be decided on the principle of jurisdiction of the court to entertain an action and take proceedings (Vide AIR 1967 S. C. 1040 *Workmen v/s Shri Ranga Vilas Motors (P) Ltd.*, and *Lalbhai Tricumlal Mills Ltd. v. D. M. Van* (1956) 1 LLJ 558 (Bom. HC) (DB).

15. Now, Shri Mendes has relied upon a ruling of Karnataka High Court reported in 1974 FJR 291 wherein His Lordship have considered the connotation of the word, "Appropriate Government", as laid down in Sec. 2 (a) of the I. D. Act. In the said case, the employer had a head office at Bombay but a Regional Manager was appointed for Karnataka State under whose control the workman was serving. His services were terminated in Karnataka State and hence His Lordships held that Karnataka State is the appropriate Government in respect of the dispute arising out of dismissal. The facts in the reported case are clearly distinguishable with the facts in the present case. In as much as, in the reported case, there was no agreement for conferring jurisdiction on any particular court and hence it was held that since the workman was serving in Karnataka State where his services were terminated, Karnataka Government was the appropriate Government to refer the dispute to the Tribunal in Karnataka State. However, in the instant case, there was a clear agreement in the letter of appointment and hence I hold that the observations made in the ruling of Karnataka High Court, relied upon by Shri Mendes absolutely of no assistance to him. Thus, in the instant case, in view of the explicit agreement appearing in the contract of service between the parties the dispute between them ought to have been referred to any Tribunal in Bombay and as such the Government of Goa not being the appropriate authority the present reference made by it is liable to be rejected for want of jurisdiction. I, therefore answer the second issue accordingly and pass the following order.

ORDER

The reference is rejected for want of jurisdiction.

No order as to costs. Inform the Government accordingly.

Sd/-
(M. A. DHAVALE)
Presiding Officer
Industrial Tribunal

Order

No. 28/22/89-ILD

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 12th March, 1993.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/42/89

Workmen	— Party I/Workmen
V/s	
M/s Goa Fruit Distilleries	— Party II/Employer
Pvt. Ltd.	

Panaji, Dated: 22-2-1993.

AWARD

In exercise of the powers conferred by clause (d) of Sub. S. (1) of S. 10 of the Industrial Disputes Act, 1947, the Government of Goa by its order No. 28/22/89-ILD dated June 23rd, 1989, has referred the following issue for adjudication by this Tribunal:

"Whether the action of the management of M/s Goa Fruit Distilleries Pvt. Ltd., Nanora, Bardez, Goa, in refusing to concede the demands of the workmen represented by the Goa Trade & Commercial Workers' Union as shown in Schedule annexed hereto, is legal and justified?

2. The Schedule appended to the above referred reference, contains as many as XII demands, the particulars of which have been stated on pages 1 to 4 of Exb. 1.

3. In substance, the demands related to; (i) Revision of Pay Scales, (ii) Fitment Benefit, (iii) Seniority Increment, (iv) Annual Increment, (v) Variable Dearness Allowance, (vi) House Rent Allowance, (vii) Leave Benefits, (viii) Seasonal Workers on Casual Basis, (ix) Travelling Allowance (x) Uniforms and Washing Allowance, (xi) Rest Room and Tiffin room, (xii) Provision for safety and rain wear.

3. On receipt of this reference a case at No. IT/42/89 was registered and notices were sent to both the parties.

4. On behalf of 13 workers Shri R. D. Mangueskar, Jr. Secretary of Goa Trade & Commercial Workers' Union filed a statement of claim wherein he has tried to justify the above referred demands made by the Union on behalf of 13 workers employed by Party II-M/s Goa Fruit Distilleries Pvt. Ltd. It has been averred that the present wages paid to the workmen are too meagre and they are also not given the other facilities which are being given in the other concerns in this locality. It has been also averred that the financial position of the Party II is sound and it can certainly afford to accede to the demands made by the Union on behalf of the workmen.

5. Party II by its Written Statement at Exb. 3 resisted the Union's claim contending inter alia that the wages and the other facilities given to the workmen are just and proper and the financial position of party II is not such, so as to accept the several demands made on behalf of the Union.

6. Thereafter, the Union filed a Rejoinder at Exb. 4 wherein the contentions taken in the Written Statement have been controverted and the Union reiterated its claim for the several demands made in the statement of claim at Exb. 2.

7. Thereafter, my learned Predecessor Shri S. V. Nevagi, framed the necessary issues at Exb. 5 and the parties led, both oral and documentary evidence, after which, the written arguments were filed by the learned Advocates for both the sides. However, thereafter, it was submitted that there was every possibility of settling the dispute out of Court and hence, the matter was adjourned. Finally, on 23-1-93, it was submitted by Shri A. M. Karnik for Party II, that all 13 workmen employed by Party II have resigned from the membership from the Union Goa Trade & Commercial Worker's Union and in proof of this fact he has also submitted the written resignations given by all the workmen dated 21st Jan., 1993. In view of the matter, it follows that the Union has now no interest in the present disputes. thereafter, some of the representatives of the workmen settled the dispute with the Management and the settlement Deed has been produced at Exb. 20. I have gone through the terms of settlement and have found that they are certainly in the interest of the workmen and hence I accept the suggestion made on behalf of both the sides to pass a consent award in terms of the settlement at Exb. 20. I, therefore, pass the following order:

ORDER

In view of the settlement at Exb. 20, the following consent award is hereby passed.

Terms of Settlement

1. It is agreed by and between the parties that the present practice of consolidated wages shall continue during the subsistence of this Settlement.
2. It is agreed between the parties that the revision in the existing wage structure shall be effective from 1-1-1993 to 31-12-1996 and thereafter will continue to be effective/binding until terminated under S. 19 of the I. D. Act, 1947.
3. It is agreed by and between the parties that the rise in the existing wage structure as on 31-12-1992 will be given as under, and shall be bifurcated into Flat Rise, Fixed Dearness Allowance, House Rent Allowance, Conveyance Allowance and Washing Allowance.

The workmen will be given a total rise of Rs. 300/- (Rupees Three Hundred Only) for the period 1-1-1993 to 31-12-1993,

for the period 1-1-1994 to 31-12-1994 additional increase of Rs. 30/- (Rupees thirty only), for the period 1-1-1995 to 31-12-1995 additional increase of Rs. 40/- (Rupees forty only) and for the period 1-1-1996 to 31-12-1996 additional increase of Rs. 55/- (Rupees fifty five only) per workmen per month.

	1-1-1993 to 31-12-1993	1-1-1994 to 31-12-1994	1-1-1995 to 31-12-1995	1-1-1996 to 31-12-1996
1. Flat Rise (to be added to consolidated wages)	Rs. 75/-	Rs. 10/-	Rs. 10/-	Rs. 15/-
2. F.D.A.	Rs. 50/-	Rs. 5/-	Rs. 10/-	Rs. 15/-
3. H. R. A.	Rs. 75/-	Rs. 5/-	Rs. 10/-	Rs. 10/-
4. C.A.	Rs. 75/-	Rs. 5/-	Rs. 5/-	Rs. 5/-
5. W.A.	Rs. 25/-	Rs. 5/-	Rs. 5/-	Rs. 10/-
Total	Rs. 300/-	Rs. 30/-	Rs. 40/-	Rs. 55/-

4. It is also agreed by and between the parties that the existing benefits such as leave, paid holidays, uniform, tea, festival advance of Rs. 1000/- (Rupees One Thousand Only) enjoyed by the 13 workmen will continue during the subsistence of this Settlement. For brevity's sake, the existing benefit of Washing Allowance of Rs. 5/- will be added to the above amount indicated against the Washing Allowance.

5. It is agreed by and between the parties that in view of the above terms and taking into account the request of the workmen, it is decided and agreed that all the 13 workmen who are in employment of the Company as on date of this Settlement and listed in the annexure will be paid lumpsum of Rs. 4,000/- (Rupees Four Thousand only) by way of ex-gratia for a period from 1-1-1989 to 31-12-1992 per workmen. This ex-gratia payment will not attract any statutory dues like PF, ESI, Bonus. The workmen also agreed that they will not raise any claim for the period 1-1-1985 to 31-12-1988 in view of the overall settlement arrived at.

GENERAL TERMS:

7. Both the parties agree that Settlement shall be filed before the Hon'ble Tribunal, Panaji, with a view to get the consent award and also for the final disposal of the reference IT/42/89.

8. All the workmen agreed that they will wholeheartedly give their full cooperation in improving the Company's performance and productivity and carry out the jobs assigned to them by their superiors irrespective of their nature of duties or designations so that the wheels of production move smoothly during the subsistence of this Settlement. In case the management desires to introduce a shift working to improve the productivity, workmen will extend their full co-operation in implementing such schemes. The Management shall explain the shift working to each workmen before introducing it.

9. It is agreed between the parties that the workmen will not raise any demands during the subsistence of this Settlement involving additional financial burden to the Company.

10. It is agreed by and between the parties that the workmen will maintain industrial peace, harmony decorum in the workplace during the subsistence of the Settlement and workmen will not resort to any direct action or pressure tactics. Both the parties agree that they will take recourse to conciliation machinery for any grievance between the workmen and the management under Industrial Disputes Act, 1947.

11. It is agreed by and between the parties that the ex-gratia payment as mentioned in clause No. 5 (five) shall be paid to the workmen not later than 3-4-1993. If financial arrangement could be made the management agrees to disburse the payment at an earlier date.

12. The arrears arising out of the implementation of this wages structure from 1-1-1993 will be paid in March, 1993.

13. No order as to costs. The Government be informed.

Sd/-
M. A. DHAVALA
Presiding Officer
Industrial Tribunal

Order

No. 28/52/91-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 12th March, 1993.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/77/89

Shri M. S. Raju
V/s.

— Workman/Party I

M/s Mandovi Hatcheries

— Employer/Party II

Workman represented by Adv. P. J. Kamat.

Employer represented by Adv. G. K. Sardessai.

Panaji, Dated: 29-1-1993.

AWARD

In exercise of the powers conferred by clause (d) of Sub. Sec. (1) of Sec. 10 of the Industrial Disputes Act, the Government of Goa, by its order No. 28/41/85-LAB dated 28th Sept., 1989, has referred the following issue for adjudication by this Tribunal.

"Whether the action of the management of M/s Mandovi Hatcheries Khandepar, Ponda, in terminating the services of Shri M. S. Raju, Technician with effect from 27-5-1985 is legal and justified?"

If not, to this relief the workman is entitled?"

2. On receipt of this reference, a case at No. IT/77/89 was registered and notices were served upon both the parties, in response to which they appeared and submitted their pleadings.

3. Party I-Shri M. S. Raju, a workman has filed the statement of claim at Exb. 2 while Party II-M/s Mandovi Hatcheries, Ponda, Goa, has filed its written statement at Exb. 3. Thereafter, the workman also

filed a rejoinder at Exb. 4 and on these pleadings my learned predecessor Shri S. V. Nevagi framed the necessary issues at Exb. 5 and thereafter the matter was posted for hearing.

4. However, thereafter, the parties arrived at a settlement which has been duly recorded at Exb. 12. By their joint application at Exb. 11, the learned Advocates for both the sides have requested for passing a consent award in terms of Exb. 12.

5. Now, some of the facts which are necessary for acceding to the request made in Exb. 11 need be stated in the beginning.

The Goa Trade & Commercial Workers' Union raised an industrial dispute before the Labour Commissioner by its letter dated 31st May, 1985 regarding termination of the present workman by name Shri M. S. Raju, Hatchery Supervisor. It was the Union's allegation that the said order of termination was illegal and unjustified. On the other hand, party II-Management controverted the said allegations and contended that the workman was terminated on account of his attitude and behaviour towards the management. Thereafter, a dispute was admitted in conciliation but since no settlement was arrived at, a failure report was submitted to the Government in response to which the Government was pleased to make this reference. Now, it is the grievance of the workman that the order of termination is illegal and unjust while the management by its elaborate written statement has tried to justify its action in terminating the services of the workman. However, as I have stated earlier, the parties have arrived at a settlement, the terms of which are stated in Exb. 12. They have been duly verified. Now, the workman under this settlement has accepted his termination and the management agreed to pay him a sum of Rs. 1,00,000-00 (Rupees one lakh only) in full and final settlement of his claim. In fact, the aforesaid amount has already been paid on 25th Jan., 1993 as can be seen from the receipt at Exb. 13. The workman has also agreed to vacate the residential premises and to offer vacant and peaceful possession to Party II. Thus, on considering the aforesaid terms, I have found that they are certainly in the interest of the workman and hence I accept the suggestion made in Exb. 11 and pass the following consent award.

ORDER

In view of the settlement at Exb. 12, the following consent award is hereby passed:

Terms of Settlement

1. It is hereby agreed by and between the parties that Shri M. S. Raju accepts his termination and the management agrees to pay Shri M. S. Raju a sum of Rs. 1,00,000-00 (Rupees One Lakh only) in full and final settlement towards all legal dues, claims whatsoever of Shri M. S. Raju against the Management and the Union and Shri M. S. Raju agree to accept the dues in full and final settlement to pursue the reference IT/77/89 and to treat the same as settled.
2. It is hereby agreed that Shri M. S. Raju, will vacate along with his family and all his belongings and will handover vacant and peaceful possession of the residential premises of the Firm in which he presently resides today at the time of signing this settlements. The Union hereby agrees to give the peaceful possession of the premises occupied by Shri M. S. Raju and the Management agrees to pay Shri M. S. Raju by Demand Draft the amount as per Clause No. 1.
3. It is hereby agreed between the Management and Union jointly and severally that all the suits, cases, disputes in connection with the issue of Shri M. S. Raju shall be withdrawn by both parties and treated as fully and truly settled and they shall have no right to re-agitate/re-open the issue before any authorities.
4. No order as to costs. Inform the Government accordingly.

Sd/-

(M. A. DHAVALA)
Presiding Officer
Industrial Tribunal

Order

No. 28/1/89-ILD

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 12th March, 1993.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/23/89

Shri Dayanand A. Kadam
V/s

— Workman/Party I

M/s Goa Electronics Ltd.

— Employer/Party II

Workman represented by Adv. P. J. Kamat.

Employer represented by Shri P. K. Lele.

Panaji, Dated: 26-2-1993.

AWARD

In exercise of the powers conferred by clause (d) of Sub. Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa by its order No. 28/1/89-ILD dated 28th March, 1989, has referred the following issue for adjudication by this Tribunal:

"Whether the action of the management of M/s Goa Electronics Limited, Mapusa in terminating the services of their workman Shri Dayanand A. Kadam, Helper, with effect from 18-5-1988 is legal and justified?

If not, to what relief the workman is entitled to?"

2. On receipt of this reference a case at No. IT/23/89 was registered and notices were served upon both the parties, in response to which they appeared and submitted their pleadings.

3. Party No. I-Shri Dayanand A. Kadam (hereinafter called as the 'Workman'), has filed his statement of claim (Exb.2) wherein it has been averred as follows:

The workman was appointed by Party II-M/s Goa Electronics Ltd. (hereinafter called as the "Employer") as a Helper w.e.f. 1-1-85. His services were confirmed w.e.f. 1-1-1986, after completion of probationary period. He was working as a Helper in the Central Stores of the Company. Besides the Central Stores from which the material is issued, there is another Section called Receipt Section where the goods purchased by the Company are received and stored. The Receipt Section and the Central Stores are two different Sections and are not situated adjacent to each other but there are one godown and two toilets in between these two sections separating them from each other. The goods received from the Receipts Section are entered in the Register maintained in the Central Stores and the goods issued from the Central Stores are also entered in the same Register. The goods from the Central Stores are issued on necessary requisitions under the signatures of the Officers from the Accounts Section. The workman was supposed to take the goods as per requisition and send them to the Store-Keeper for verification. The goods are accordingly packed and sealed in presence of Store Keeper who used to certify by putting his signature on the seal. On 20-10-87, on receipt of the requisition from Miss S. Phadte, the goods were taken out and after verification by the Store Keeper they were packed and sealed in the presence of Store Keeper and Miss Phadte. The said goods were delivered to Miss

Phadte after the seal was signed by the Store-Keeper. On 18-11-87 the workman fell sick on account of acute bronchitis and was under medical treatment from 18th to 20th Nov., 1987. On 21-11-87 when he came to work along with a medical certificate, he was served with a suspension letter of even date, with a cooked up story that he had intentionally packed two deflection Yokes on 20-12-87 while handing over the materials to Miss Phadte and that she had returned the material to him on 24-10-87 and that he had not accounted the said materials in Stores and mis-appropriated them. Subsequently, on 26-11-87, the workman was charge-sheeted which charge sheet, he received by Registered post on 2-12-87. He was given a very short time to give his reply. However, he sent his reply on 3-12-87 in which he submitted that he was not in a position to file a detailed reply. However, he mentioned that all the materials were packed and supplied after verification of the Store-Keeper. It is the grievance of the workman that he was not given sufficient time to reply the charge sheet and was also not given a statement/complaint of Miss Phadte and other witnesses which were subsequently produced in the enquiry and thereby he was denied an opportunity to study the documents. Thereafter, the enquiry commenced on 9-12-87 which was concluded on 24-2-88. The workman has made several allegations against the fairness and legality of the Domestic enquiry held against him and has averred that the same was conducted against the principles of natural justice. Alternatively, it has been further averred that if the Tribunal holds that the enquiry is fair and proper still it has been averred that the findings of the I. O., are perverse which are not based on proper appreciation of evidence. It has been averred that there was absolutely no material to hold that the charges levelled against the workman were proved and hence the order of termination, which has been based on the findings of the enquiry officer is not just and legal. Hence, it has been prayed that the order of termination be set aside and the workmen should be reinstated with other incidental reliefs.

4. Party II-M/s Goa Electronics Ltd.,-Employer, by its written Statement at Exb.3 resisted the workman's claim contending inter alia as follows:

Party II is a Company constituted and registered under the provisions of the Company's Act, 1956. It owns a factory at Mapusa Industrial Estate, where the activity of manufacturing Television sets is carried out. The workman of several categories are employed in the said factory and accordingly workman Dayanand Kadam was employed in the capacity of Helper and was posted in the Stores Department of the factory. In the month of Nov., 1988, the employer found that a number of components used for manufacture of televisions were finding their unauthorised way out of factory. The employer was informed that two of such parts were unauthorisedly packed and delivered by Shri Kadam to Miss Phadte, the Sub-Contractor while she had come to the factory on 20-10-87 to collect materials. Hence, the present workman was put under suspension on 21-11-87 followed by a show cause notice dated 26-11-87. Thereafter a Domestic Enquiry was conducted wherein the workman fully participated. He was represented by a representative of his own choice. The enquiry officer had followed all the principles of natural justice in as much as he had given adequate opportunity to the delinquent to defend himself. Thereafter, the I. O., submitted his findings in which he found the present workman guilty of misconduct alleged against him. Hence, after accepting his finding, the employer issued a show cause notice to the workman calling upon him to show cause why his services should not be terminated. On receipt of his explanation, which was found to be unsatisfactory, the workman's services were terminated under a letter dated 18-5-88. Thus, there is absolutely nothing to find fault with the Domestic Enquiry held against the workman. Without prejudice to the aforesaid contentions, it has been contended that the allegations made in para. 1 to 6 are quite correct. The contents of para.7 of Exb. 2 are denied as they do not reveal the real state of affairs. It is denied that the workman packed and sealed the materials to be issued to Miss Phadte in the presence of Store-Keeper. The contents of para. 8 are true. However, the contents of para. 9 and 10 are totally denied. It is true that the workman was not paid subsistence allowance from month to month but that alone does not deprive him of his opportunity to defend himself. His request for being represented by the person of his choice was considered in his favour. Hence, it has been contended that the enquiry held against the workman is perfectly legal and proper and the findings of the I.O., are well justified by the evidence led before him. Hence, it has been contended that the order of termination passed against the workman is well justified and calls for no interference by this Tribunal.

5. Thereafter, Party I-Workman filed a rejoinder (Exb.4) wherein he controverted all the material contentions of the employer and reiterated his claim made in Exb. 2.

6. Thereafter, my learned predecessor framed as many as 7 issues at Exb. 5. However, he ordered that the issues regarding fairness and legality of the Domestic Enquiry shall be treated as preliminary issues and accordingly the evidence was led, which I considered and by my order dated 28-3-1991. I held that the enquiry officer had properly followed the principles of natural justice and the workman was given sufficient opportunity of defending himself and that the workman had fully participated in the Domestic enquiry and as such, the Domestic Enquiry was perfectly legal and proper. After having held as above, the learned Advocates for both the sides submitted that in view of my finding on the preliminary issues, issue No. 5 only survives for determination. However, for finding out as to whether the order of termination is well justified, I will have to see whether the charges levelled against the workman have been satisfactorily proved. In view of the matter issues No. 1, 5, 6 and 7 remain for consideration, which are as follows:

1. Whether the Party I/Workman was proved to have taken two components used in the manufacture of Televisions from the Factory premises in collusion with Miss S. Phadte on 20th October, 1988 as alleged?
 5. If so, whether the action of the management in terminating the services based on the report of the Inquiry Officer is just and legal in the circumstances of the case.
 6. If not, what reliefs, if any, is the workman entitled to?
 7. What order?
5. My findings on the above issues are as follows for the reasons stated below:
1. In the affirmative, but not in collusion with Miss Phadte.
 5. Yes.
 6. The workman is not entitled to any relief whatsoever.
 7. As per final order below.

REASONS

6. Now, as I have stated earlier by my detailed order dated 28-3-1991. I held that the domestic inquiry against the workman was perfectly legal and proper and hence the only point that arises for consideration is whether the punishment inflicted upon the workman is just and proper. Now, Shri P. J. Kamat even in his written arguments at Exb. 17, which were submitted for determining the preliminary issues, at the end of Exb. 17 in para. 36 has submitted that in case the Tribunal comes to the conclusion that the enquiry is just and fair, party I be given an opportunity to argue on the matter of quantum of punishment (underlining is mine for emphasis). However, at the time of submitting his arguments (Exb. 24) on the final issues, Shri Kamat has made a grievance that the finding recorded by the I. O., are perverse and as such they should not be accepted for justifying the punishment imposed upon the workmen. In his written arguments at Exb. 24 he has attempted to re-appraise the entire evidence for emphasising that the evidence tendered before the I. O., was in the first place contradictory and secondly, the I. O., has relied upon hearsay, evidence to arrive at his finding. He has also relied upon the rulings reported in 1991 CLR 225 (S.M. Marvadi V/s Lipton Tea Pvt. Ltd.) wherein, it has been observed by their Lordships of our High Court that the hearsay should not be accepted in proof of the charges levelled against delinquent even in Domestic Enquiries. Similar view has also been taken by the Supreme Court in the case of Central Bank of India V/s P. C. Jain reported in 1969 H.L.J. 1380. I will therefore proceed to consider how far the grievance made by Shri Kamat for assailing the findings of the I. O., can possibly be accepted. Now, the charges levelled against the delinquent before the I. O., can be found at Exb. M-3 in the enquiry proceedings. The allegations made in the charge sheet were in substance to the effect that on 20-10-87

the workman-Shri Dayanand Kadam fraudulently packed 2 d. yokes in a parcel which was subsequently delivered to Miss Phadte knowing full well that the said parts were not requisitioned and were not to be delivered to Miss S. Phadte. Secondly, when Phadte returned the said two d.yokes on 24-10-87 in the factory premises, he did not hand over the same to the Officer in the Stores and thereby he misappropriated the company's valuable property. At this juncture, it will have to be mentioned that the management had received informations that the spare parts of the television are available in the market by dishonestly removing them from the Stores. Dept., by some of the employees. It is on this information, when it was found that 2 d. yoke were fraudulently packed by Shri Kadam and handed over to Miss Phadte who in her turn returned the same to Kamat, the Company found that Shri Kadam was guilty of committing theft and or misappropriation of Company's property. Hence, he was charge sheeted and eventually a Domestic Enquiry was held against him in which the charges levelled against him were held to have been proved. However, as I have stated earlier the finding of the I. O., has been assailed by Shri Kamat on the aforesaid grounds and hence I will proceed to consider his grievance in this behalf. Now, before the I. O., the management examined as many as four witnesses. The evidence of the last witness by name P. J. Bhomkar relates to the procedure of delivering spare parts to the Sub-contractors. He was serving as a Store-Keeper while Shri Kadam was serving as Helper in the Stores Department. It was the duty of Shri Kadam to collect materials from Receipt Section, make respective batches of the material and issue the same to the Sub. Contractor. The procedure of the issue of material to the Sub. Contractor is that the Materials Dept., used to issue slips in the name of the Sub.Contractor giving therein the details of the materials supplied to the Sub.Contractor and this slip is known as MRS i.e. Material Requisition Slip. On the basis of MRS the Store Keeper used to give instructions to the Helper to issue materials, to the Sub.Contractor. In the present case MRS at Sr. No. 09984 from Book No. 168 was issued and the same is dated 20-10-87. The said slip was in the name of Miss Phadte for issue of 300 Nos. of Main Bunch. Then, he has given the list of spare parts which were to be delivered to Mrs. Phadte. However, in the said slip he has stated, "No Deflection Yokes were to be issued to Miss Phadte as they were not required for the work entrusted to her". Thereafter, he made a report on 18-11-1987 which is at Exb. M-9. At that time, Miss Phadte told him that she had found two d. yokes along with the materials issued to her on 20-10-87 and hence on 24-10-87 she handed over those yokes to Shri Kadam by coming to the Factory. Now, although Shri Kadam received these two yokes back from Miss Phadte, still he did not return the same to the stores nor did he inform Shri Bhomker who was the Store Keeper. Now, he has further stated that the material which goes out of the Factory is sealed at the Stores by the Helper and thereafter it is not checked by the security at the gate. The packets are sealed by the Helper and the Store Keeper is supposed to only sign on the papers of the box. This being the practice, it was easy for the Helper like Shri Kadam to pack some extra spare parts in a parcel and after sealing the same, to obtain the signature on the sealed box which used to go out of the Company's premises without being detected by the Security Officer. At the most, the security officer would be satisfied only by the signature and by seeing the slip on the parcel, but he was not concerned with the contents of the parcel. Hence, as I have stated earlier, the evidence given by Shri Bhomker clearly goes to show that it was possible for Shri Kadam to fraudulently remove some spare parts of television without being detected by any one. His fraudulent act would have been detected only by the Sub.Contractor only if he or she were honest in returning the additional spare parts for which no MRS was issued. Shri Bhomker has clearly stated that two d.yokes were not required by Miss Phadte and when she found the same in her packet when seal was broken, she honestly returned the same to Shri D. Kadam because they were packed by Shri Kadam. Now, Shri Bhomker has been elaborately cross examined but at the outset it will have to be stated nothing favourable for the defence of the delinquent has been brought on record in his cross examination. On the other hand, some admissions have been brought on record in the cross examinations which totally falsify the defence of Shri Kadam. In his cross examination, it has been brought on record that it was the duty of Shri Kadam to pack the material and issue to the concerned person at the Stores after obtaining the signature on the sealed box, which is already packed. He has stated that it was also the duty of Shri Kadam to pack proper material that is required under MRS. He has stated that he had no occasion to see two d.yokes in the box as the box was already packed and sealed which

was to be delivered to Miss S. Phadte. All these admissions which have been brought in the cross examination of Shri Bhomker totally nub in the bud, the defence of Shri Kadam which is on of total denial. In his cross examination, he has further stated, "I asked Miss Phadte as to why he did not returned the yokes to him directly to which who replied that, since the same was delivered to her by Shri Kadam, she returned it back to Shri Kadam." This admission also further supports the allegations made by the management that although Phadte had returned the two parts to Shri Kadam from whom she had taken, still Shri Kadam did not return the same to the Store Keeper. Thus, the evidence of Shri Bhomker totally falsifies the defence of the delinquent.

7. Then next witness who is the star witness in this case is Miss S. Phadte - MW-3, in the enquiry papers. In her evidence she has stated that she had taken the sub contract of bunching of wires from Party II, since 1983. On 20-10-87 she collected the materials for bunching. However, on the next day she found two more parts in the said material. They were not required by her in her job. She was also not knowing the names of those parts. However, she has affirmed that on 20-10-87 the materials were given to her by Shri Kadam. Hence on 24-10-87 She took those parts and handed over the same to Shri Kadam. This is in substance, the evidence of Miss Phadte.

8. Now, Miss Phadte has been also very searchingly cross examined on behalf of the delinquent. However, at the outset it will have to be stated that nothing favourable to the defence of the delinquent has been brought on record in her cross examination. In her cross examination, she has stated that she is conversant of the procedure followed for taking materials from the Factory. She has stated, "There is one Mr. P. Bhomkar, who signs over the seal, packed by Shri D. Kadam who was a Helper". Thus, she has also re-affirmed the fact that the parcel used to be sealed and then the signature of the Store Keeper used to be obtained on the sealed packed. Hence, the Store Keeper was not expected to know what articles were packed as the packet was already sealed by the Helper. She has stated that generally she used to be present when the spare parts were packed by Shri Kadam. However, on 20-10-87 although she was present in the beginning, she left the room to find out whether tempo was available and during her temporary absence, Shri Kadam managed to include two more spare parts which were not indented. In her cross examination she has again admitted, "when I handed over 2 Nos. of Yokes, back to Shri D. Kadam on 24-10-1987, the Watchman was near." Finally, she had demed the suggestion that she did not hand over the Yokes to Shri Kadam. This is all the cross examination of Miss S. Phadte on the material point.

9. Now, as observed above, she was the main or star witness in this case and her evidence undoubtedly establishes the fact that Shri Kadam had included two D. Yokes in the parcel containing other material on 20-10-87. However, when she detected the presence of two more spare parts which were not wanted by her, she immediately on 24-10-87 returned the same to Shri Kadam from whom she had taken the delivery of the sealed packet. The evidence of Miss Phadte further reveals that thereafter, on 18-11-1987 she submitted a report which is also in the enquiry papers. It clearly shows that when she detected the presence of two spare parts in her parcel, she returned the same to Shri Kadam on 24-10-87. Now, Shri P. J. Kamat has attempted to urge that the evidence given by Miss Phadte is contradictory and secondly, it is the grievance of the workman that Miss S. Phadte was not well disposed towards him. However, at the outset, it will have to be stated that there is absolutely nothing to uphold the submission of Shri Kamat that the evidence of Miss Phadte is contradictory on material points. Secondly, the allegation of Shri Kadam that Miss Phadte is not well disposed towards him is also an after thought and without any foundation. In his evidence Shri Kadam has attempted to state that Miss Phadte was not well disposed towards him and that she had an animus against him because he had not favoured her by giving additional material and that she used to obtain petty hand loans from him which she did not return. Now, it is very significant to note that in the cross examination of Miss Phadte there is not even a whisper to any of the allegations made by Shri Kadam

in a statement before the I. O. Not even a single suggestion have been put to her that she was not well disposed towards Shri Kadam on account of any of the aforesaid allegations made by Shri Kadam in his statement before the I. O. I, therefore, hold that whatever has been stated by Shri Kadam against Miss Phadte is an after thought and on that count alone, the same will have to be rejected. I, therefore hold that the evidence given by Miss Phadte substantially supports the allegations made against Shri Kadam on the basis of which he was charge sheeted.

10. Then there is the evidence of Shri A. J. Ajgaonkar who is the Personnel Officer with Party II. His evidence discloses that on 18-11-87, Shri N. V. Bandekar, a clerk reported to him about the missing of certain spare parts of the Transistors. In the said report there was also an allegation that two Deflection Yokes were unauthorisedly taken out of the Factory premises. They were issued by Shri Kadam to Miss Phadte on 20-10-87. He has further stated that on 18-11-1987 Miss Phadte had been to the Factory and when enquired she agreed having received two components along with the other materials which were issued to her on 20-10-87. Over and above, he has further stated that Miss Phadte told him that she has returned those two components to Shri Kadam. Thereafter, he has stated that Shri Kadam was absent from 18-11-87 and hence the Suspension Order dated 21st Nov., 1987 was served upon him. There is absolutely nothing worth noting in his cross examination which could support the defence of the workman.

11. This was all the evidence that was led on behalf of the management. As against this evidence, workman-Kadam examined himself and he also led the evidence of one of his colleagues by name Shri Jayant Raut. In his evidence Shri Kadam has attempted to deny all the allegations made against him by the management's witnesses in regard to the dishonest removal of two D. Yokes. He has also made several allegations against Miss Phadte to indicate that she was not well disposed towards him. However, I have already considered this aspect of the case foregoing paragraphs of this judgement and hence the same need not be repeated. At the cost of repetition I would only say that all allegations made against Miss Phadte are after thought in as much as, no suggestion was put to her in her cross examination and on this ground alone, whatever has been stated by Shri Kadam against Miss Phadte will have to be rejected. Then, there is the evidence of Jayant Raut who is serving as an Operator. In his examination in chief itself, he has stated that he came to know about the charges levelled against Mr. Kadam only when there was a talk going on in the Factory about Kadam who was alleged to have been involved in a theft case. He is not aware of the contents of the charge regarding the handing over of Yokes. This is the only evidence given by Jayant Raut in his examination in chief. However, whatever has been stated by Raut is absolutely of no assistance to Shri Kadam in establishing his defence.

12. Thus, after having re-appraised the entire evidence in the light of the submission made by Shri P. J. Kamat for the workman, I have come to an irresistible conclusion that the charges levelled against Shri Kadam were squarely proved and the finding recorded by the I. O., are well justified. Now, it has been rightly urged by Shri P.K. Lele for Party II that even the re-appraisal of evidence for holding as to whether the findings recorded by the I. O., are well justified, is not permissible to the Industrial Tribunal. To support his submission in this behalf, he has placed reliance on the Supreme Court ruling in the case of M/s The Benaras Electric Light and Power Co. Ltd., V/s Labour Court II, Lucknow and others (1972 LAB. I. C. 939). In para. 4 of this judgment, it has been observed by their Lordships thus:

"This Court in several cases while dealing with industrial disputes of this kind, had occasion to point out that an industrial tribunal would not be justified in characterizing the finding recorded in the domestic inquiry as perverse unless it can be shown that such a finding is not supported by any evidence, or is entirely

opposed to the whole body of the evidence adduced before it. In a domestic inquiry once a conclusion is deduced from the evidence, it is not permissible to assail that conclusion even though it is possible for some other authority to arrive at a different conclusion on the same evidence."

13. Thus, respectfully following the above referred observations, I hold that the arguments advanced by Shri P. K. Lale must be accepted. Even otherwise I have already re-appraised the evidence and have found that the findings of the I. O., are well justified.

14. I, therefore, hold that the act of Miss Kadam in packing two extra spare parts i.e two D. Yokes in a parcel delivered to Miss Phadte clearly amount to theft or mis-appropriation of the Company's property. Over and above, when Miss Phadte returned those two parts to Miss Kadam, he dis-honestly retained the same with him and thereby clearly committed the act of mis-appropriation of the employer's property. If there was a mistake on his part in including those two to parts in the parcel then when the said two parts were returned to him by Miss Phadte he could have honestly returned the same to Store Keeper after admitting his mistake. However, this was not done and instead he retained thereby misappropriating the company's property. There does not seem to be any collusion between Shri Kadam and Miss Phadte in dishonestly removing the spare parts. Had it been so, then in the normal course of events when the parcel had reached in the hands of Miss Phadte she could not have normally returned the said two parts to Shri Kadam and in that event both of them could have mis-appropriated the Company's property. However, the very fact that Miss Phadte returned those two parts to Shri Kadam immediately after she detected the presence of two Yokes in her parcel clearly goes to show that she was innocent in the whole affair, and as such, it cannot be said that Shri Kadam in collusion with Miss Phadte acted against the interest of his employer. I, therefore, hold that the charges levelled against Shri Kadam were squarely proved and hence I answer issue No. 1 in the affirmative. The next question that arises for determination as to whether the extreme penalty of dismissal is called for in this case. Now, the act of stealing and or mis-appropriating the Company's valuable property certainly amounts to mis-conduct. There was a rumour that the spare parts of Goa Electronics were going out of Factory and on this background it clearly seems to me that Shri Kadam must have had a hand in dis-honestly removing the Company's property without being detected in the past. It has been rightly pointed out by Shri P. K. Lele that Shri Kadam was employed at a strategic position of handling the Store materials and regard being had to his behaviour in dis-honestly removing and retaining the Company's valuable property, it was not possible to keep such a man in service and the punishment imposed upon him should have been one of exemplary nature. I, therefore, hold that the order of termination passed against the workman is well justified and calls for no interference by this Tribunal. I, therefore, answer issue No. 5 accordingly.

15. In view of my findings in the above issues, it follows that Party I- Workman is not entitled to any relief whatsoever and hence I pass the following order.

ORDER

It is hereby declared that the action of the Management of M/s Goa Electronics Limited, Mapusa, Goa, in terminating the services of Party I- Shri Dayanand A. Kadam, Helper, with effect from 18-5-1988 is perfectly legal and justified and hence Party I-Workman is not entitled to any relief whatsoever.

No order as to costs. Government be informed.

Sd/-

(M. A. Dhavale)
Presiding Officer
Industrial Tribunal

Office of the State Director of Craftsmen Training

Order

No. 23/18/88-LAB/184

Government is pleased to transfer and post the following Group 'B' Gazetted Officers in the office of the State Director of Craftsmen Training as shown herebelow:—

Sr. No.	Name of the Officer & present post	Post to which transferred
1	2	3
1.	Shri S. M. Patker, Asstt. Apprenticeship Adviser, Office of State Director of Craftsmen Training, Panaji.	Stands transferred & posted as Engineer-in-Charge, Common Service Facility Centre, Panaji vice Shri A. S. Banastarkar Engineer-in-Charge, Common Service Facility Centre, Panaji transferred.
2.	Shri A. S. Banastarkar, Engineer-in-Charge, Common Service Facility Centre, Panaji.	Stands transferred & posted as Technical Officer (Training), Office of State Director of Craftsmen Training, Panaji, vice Shri R. S. Siddarkar, Technical Officer (Training), transferred.
3.	Shri R. S. Siddarkar, Technical Officer (Trg.), Office of State Director of Craftsmen Training, Panaji.	Stands transferred & posted as Asstt. Apprenticeship Adviser, Office of State Director of Craftsmen Training, Panaji vice Shri S. M. Patker, Asstt. Apprenticeship Adviser, transferred.

This order comes into force with effect from 31-1-97 (A. N.)

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, State Director of Craftsmen Training
Ex-Officio Joint Secretary (Labour).

Panaji, 30th January, 1997.

Department of Law and Judiciary

Law (Establishment) Division

District and Sessions Judge

Order

No. DSC/MAR/GEL-10/1999/295

Ex-post facto sanction is hereby granted for availing of commuted leave for 5 days with effect from 7-12-98 to 11-12-98 with permission to prefix 6-12-98 being Sunday & to suffix 12-12-98 & 13-12-98 being 2nd Saturday & Sunday respectively to Smt. Manju Sharma, Civil Judge, Senior Division & Judicial Magistrate, First Class, Vasco da Gama.

Certified that but for proceeding on leave she would have officiated as Civil Judge, Sr. Divn., & J. M. F. C., Vasco da Gama.

On return from the above leave Smt. Manju Sharma was reposted as Civil Judge, Sr. Divn., & J. M. F. C., Vasco da Gama.

During the above leave Shri D. D. Dhumaskar, Addl. Civil Judge, Sr. Divn., & J. M. F. C., Vasco da Gama was kept in charge to look after the urgent Civil & Criminal work pertaining to the Court of the Civil Judge, Sr. Divn., & J. M. F. C., Vasco da Gama, in addition to his duties.

Smt. Manju Sharma will have 231 days of half pay leave at her credit as on 31-12-1998.

V. P. Shetye, District & Sessions Judge (South).

Margao, 15th January, 1999.

Department of Panchayat Raj and Community Development

Directorate of Panchayats

Order

No. DDPN/CAL/10/97/255

Whereas it has come to the notice of the Government that the Village Panchayat of Calangute has committed serious violations of the provisions of the Goa Panchayat Raj Act, 1994 (Goa Act 14 of 1994) (hereinafter referred to as the said "Act") the Goa, Daman and Diu Village Panchayats (Regulation of Buildings) Rules, 1971, and CRZ Regulations, while issuing permissions for construction of buildings, hotels, etc.

And whereas the Government deems it expedient to cause an inquiry to be made by its officers specified below, in regard to the aforesaid violations committed by the Village Panchayat of Calangute.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 177 of the said Act, the Government of Goa hereby directs the following Officers, viz.

- (1) Dr. N. P. S. Varde,
Director/Joint Secretary of the Science Technology and Environment Department, Panaji-Goa.
- (2) Shri S. N. Pissurlekar,
Chief Architect of Public Works Department, Panaji-Goa.
- (3) Shri V. V. Santhanam,
Superintending Engineer of Public Works Department, Panaji-Goa.

to cause an inquiry to be made in regard to the Village Panchayat of Calangute, during the last five years, in respect of -

- (i) issue of permissions for construction of buildings, hotels, commercial complexes, etc;
- (ii) occupancy certificates issued;
- (iii) any violations of CRZ Regulations and the provisions of the Land Revenue Code, 1968 (Act of 1969);
- (iv) any Government Department Office or authority were/are involved in violations of the provisions of the or of the Goa, Daman and Diu of the Village Panchayats (Regulation of Buildings) Rules 1971 of CRZ Regulations or the Goa Land Revenue Code, Rules 1968;

The said officers shall submit their report within a period of four months from the date of issue of this order.

By order and in the name of the Governor of Goa.

G. G. Kambli, Director of Panchayats and Ex-Officio Joint Secretary.

Panaji, 22nd January, 1998.

Notification

No. 19/32/DP/PAN/ELEC/SAR/Dy.SAR/97/2153

In pursuance of sub section (1) of Section 46 of the Goa Panchayat Raj Act, 1994 (Goa Act 14 of 1994) it is hereby notified for the information of the public that Smt. Ashwini Anant Bhonsle, H. No. 316, Pavacha Wada Camurlim Bardez member of village Panchayat Camurlim has been elected as Sarpanch to the said Panchayat in the meeting held on 29-11-1997.

G. G. Kambli, Director of Panchayats.

Panaji,

Notification

No.19/32/DP/PAN/ELEC/SAR/Dy. SAR/97/2368

In pursuance of sub- section (1) of Section 46 of the Goa Panchayat Raj Act, 1994 (Goa Act 14 of 1994) it is hereby notified for the information of the public that Shri Ramji D. Naik, H. No. 130, Ambekhan Reis Magos member of Village Panchayat Reis Magos has been elected as Sarpanch to the said Panchayat in the meeting held on 26-12-1997.

G. G. Kambli, Director of Panchayats.

Panaji,

Addendum

No. 28/1/DP/Const-ZP/97/249

Read:- Order No. 28/1/DP/Const-ZP/96 dated 18-8-97.

In para 1 of the above cited order after the words "Khadi and Cottage Industries" the words "and Representative of the Education Department" shall be inserted in order to recommend to what extent in item Nos. XIII, XIV, XV of the schedule I of the Goa Panchayat Raj Act, 1994 could be transferred to the Village Panchayats.

By order and in the name of the Governor of Goa.

G. G. Kambli, Director of Panchayats and Ex-Officio Joint Secretary.

Panaji, 21st January, 1998.

Addendum

No. 28/1/DP/Const-ZP/97/249

Read:- Order No. 28/1/DP/Const-ZP/96 dated 18-8-97.

In para 1 of the above cited order, after the words "Electricity Department" the words "and Representative of the Rural Development Agency and Arts and Culture" shall be inserted in order to recommend to what extent in item Nos. XII and XVI of the Schedule I of the Goa Panchayat Raj Act, 1994 could be transferred to the Village Panchayats.

By order and in the name of the Governor of Goa.

G. G. Kambli, Director of Panchayats and Ex-Officio Joint Secretary.

Panaji, 21st January, 1998.

Department of Public Health

Order

No. 8/49/91-II/PHD/9271

On the recommendation of the Goa Public Service Commission vide their letter No. COM/II/11/30(6)/98 dated 14-12-98, Government is pleased to promote Dr. Ugam P. S. Usgaonkar, Assistant Professor of Ophthalmology to the post of Associate Professor of Ophthalmology in Goa Medical College in the pay scale of Rs. 10000-325-15200 + NPA with immediate effect against the post of Associate Professor created vide Order No. 1-10-79/PHD/Part/806/74/1015 dated 23-9-98.

The promotion is from one group 'A' post to another Group 'A' post and hence there is no probation period prescribed as per Recruitment Rules.

By order and in the name of the Governor of Goa.

Dr. M. N. Pal, Ex-Officio Addl. Secretary.

Panaji, 4th January, 1999.

Order

No. 22/1/97-DHS

On the recommendation of the Goa Public Service Commission vide their letter No. COM/1/5/24(1)/90 dated 6-4-1998, the following Doctors are appointed to the post of Medical Officers or in the post of equal grade (Group 'A') under the Directorate of Health Services, Panaji, on regular basis with immediate effect in the pay scale of Rs. 8000-275-13500 on the terms and conditions contained in memorandum of even No. dated 28-4-1998 and posted at the place indicated under column No. 3 against their names:-

Sr. No.	Name and address	Designation and place of posting
1	2	3
1.	Dr. Sundar D. Habbu, Vijay Nagar Housing Society, B, G2, Corlim Ilhas-Goa.	Medical Officer, Community Health Centre, Valpoi vice Dr. Vandana Patankar transferred.
2.	Dr. Jose O. A. Do Rosario Laurence, House No. 413, Abade Faria Road, Margao-Goa, 403 601.	Medical Officer, Hospicio Hospital, Margao vice Dr. Maria Pacheco transferred.
3.	Dr. Maruti Ganesh Naik, E-662, Near Housing Board Office, Vidyanagar-Gogol Margao-403 601.	Medical Officer, Hospicio Hospital, Margao vice Dr. Vinayak Buvaji appointed as Jr. Gynaecologist.
4.	Dr. Manguirish Gurudas Audit, House No. 114, Old Market, Margao-Goa 403 601.	Medical Officer, Hospicio Hospital, Margao vice Dr. Lena Gracias Cunha transferred.
5.	Dr. Charu Padbidri, 149-A NOFRA-I, Airport Road, Vasco.	Rural Medical Officer, Rural Medical Dispensary, Arambol vice Dr. Shanilo Fernandes transferred.
6.	Dr. Poonam Tiwari, C/o Dr. J.P. Tiwari (Asst. Prof.), Nephrology, Type-V, 11, GMC Complex, Bambolim-Goa 403 202.	Rural Medical Officer, Rural Medical Dispensary, Kumbharjua vice Dr. A. J. Valadares transferred.

They shall be on probation for a period of two years.

Doctors at Sr. No. 1, 2, and 3 have been medically examined and found fit by the Medical Board. The appointment of Doctors at Sr. No. 4, 5 and 6 is subject to the production of medical fitness certificate from the Medical Board.

The appointment of all the above mentioned doctors is subject to the verification of their character and antecedents. They shall report for duties by 19-6-1998.

The pay of Dr. Sundar D. Habbu at Sr. No. 1 above may be fixed as per pay protection rules.

By order and in the name of the Governor of Goa.

Dr. A. V. Salelkar, Ex-Officio Jt. Secretary/DHS.

Panaji, 5th June, 1998.

Government Printing Press

Notice

The subscribers to the Official Gazette are kindly reminded that their present subscription term ends on the 31st March, 1999, being the end of financial year.

In case they wish to continue to be subscribers for the ensuing financial year of 1999-2000 they have to renew their subscriptions from 1st April, 1999.

Subscriptions also can be opened for half year i.e. from 1st April, 1st July or 1st October or for any quarter, beginning on 1st April, 1st July, 1st October or 1st January.

Renewal of subscription from 1st April should be effected on or before 31st March, 1999 in order to avoid interruption in the despatch of copies of the Gazette. It should be noted that, in case the subscription is not opened/renewed before the commencement of the period to which it refers, the subscribers will be entitled to receive copies of the Gazette only from the date the subscription is actually opened/renewed.

The subscription charges are accepted either in cash, postal order or demand draft only on State Bank of India, Panaji, in favour of the Director, Printing and Stationery, Panaji-Goa. Remittances by cheques or any other form of payment will not be accepted.

The payment of subscriptions will also be accepted at the Margao Branch of this office situated in the Comunidade Building at Margao.

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